

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:11cv297**

<b>WHY DRIVE 55, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b><u>ORDER</u></b>
	)	
<b>BONNIE DUNCAN, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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Previously, Plaintiff sought leave of Court to file a Second Amended Complaint. The Court granted Plaintiff's motion and gave Plaintiff seven days to file a Second Amended Complaint. (Order, May 3, 2012.) In its Order, the Court also directed Defendants that they would have twenty days from the filing of the Second Amended Complaint to file their answers or otherwise respond to the pleading. (Order, May 3, 2012, at p. 3.) Plaintiff then filed a timely Second Amended Complaint on May 8, 2012.

In response to the Second Amended Complaint, Defendant Steven Allen filed a timely Motion to Dismiss [# 55]. Defendants Alyssa Duncan, Robert Hettinger, and Bonnie Duncan ("Defendants"), however, each failed to file a timely response to the Second Amended Complaint as directed by this Court's

May 3, 2012, Order. Instead, Defendant Alyssa Duncan filed a Motion to Dismiss on June 1, 2012. Defendants Robert Hettinger and Bonnie Duncan filed Motions to Dismiss on June 4, 2012. Defendants, who are all represented by counsel, did not move for leave to extend the time frame for responding to the Second Amended Complaint and, to date, have not done so. In fact, even after Plaintiff pointed out in its responses to the Motions to Dismiss that the motions were all untimely, Defendants still failed to move for an extension of time pursuant to Rule 6 of the Federal Rules of Civil Procedure. Not only have the Defendants failed to file such motions, they have not set forth excusable neglect for why they failed to comply with the deadline imposed by the Court. See Fed R. Civ. P. 6(b)(1)(B). Because the motions filed by Defendants Alyssa Duncan, Robert Hettinger, and Bonnie Duncan are untimely, and because Defendants have not moved for leave to file them out of time, the Court **STRIKES** the Motions to Dismiss [# 58, # 60, & # 62] as untimely and for failure to comply with the Court's prior Order. Defendants Alyssa Duncan, Robert Hettinger, and Bonnie Duncan shall have ten (10) days from the entry of this Order to file their Answer to the Second Amended Complaint. At this stage of the proceedings, no leave shall be granted by this Court to file the Motions to Dismiss out of time. Failure to comply with this Order will result in default being entered against these Defendants.

Signed: January 16, 2013

Dennis L. Howell  
Dennis L. Howell  
United States Magistrate Judge

